IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2005

Coram :

THE HONOURABLE MR. JUSTICE N.DHINAKAR
and
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL No.566 of 1999

State by
Public Prosecutor,
High Court, Madras. Appellant/ Complainant

v

1.Palani
2.Kandan
3.Velu
4.Munusamy
5.Lakshmanan
6.Chinnathambi
7.Durai
8.Murugan
9.Rajavelu
10.Raman
11.Ramasamy
12.Balakrishnan
13.Subramani
14.Kutta Velu
15.Veerasamy Respondents/ Accused

Criminal Appeal filed under section 378 of the Code of Criminal Procedure against the judgment passed by the I Additional Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri in S.C.No.109 of 1990 dated 01.04.1999.

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For Appellant .. Mr.S.Jayakumar,
Addl. Public Prosecutor

For Respondents .. Mr.R.Sankarasubbu

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JUDGMENT

(Judgment of the Court was delivered by
M.CHOCKALINGAM, J.)

Aggrieved over the judgment of the Court of Session, Dharmapuri in Sessions Case No.109 of 1990, acquitting all the respondents, who are 15 in number, the State has brought forth this appeal. The respondents/accused 1 to 15 stood charged and tried as follows :

Accused 1 to 15 were charged under Sections 148, 449 and 396 of the Indian Penal Code.

Accused 1 was charged under Section 302 of the Indian Penal Code.

Accused 2 to 15 were charged under Section 302 read with 149 of the Indian Penal Code.

Accused 1 to 3, 6, 7 and 9 were charged under Section 395 read with 397 of the Indian Penal Code.

Accused 1 to 3, 5 to 7, 11 and 12 were charged under Section 342 of the Indian Penal Code.

Accused 1, 2, 5, 11 & 12 were charged under Section 427 of the Indian Penal Code.

Accused 1 to 3, 5 to 7 11, 12 were charged under Section 342 (2 counts) of the Indian Penal Code.

Accused 1 and 2 were charged under section 324 of the Indian Penal Code.

All the accused were acquitted of all the charges levelled against them.

2. The short facts necessary for the disposal of this appeal can be stated thus :

(a) P.Ws.1 and 2 are the sons of the deceased Sengoda Gounder. P.W.3 is the wife of the deceased. All the prosecution witnesses were residing at Mariampatti. The accused belong to a nearby village Karuvelampattu. There had been a long standing enmity between the families of the deceased and the accused for about more than two decades. Sengoda Gounder owned 20 acres of land near the lands belonging to accused 1, 2, 4 and 5. Sengoda Gounder, in order to go to his land, has to necessarily go through the land of the accused. When the tractor belonging to Sengoda Gounder went by that way in the year 1985, it was prevented and when the family members of Sengoda Gounder questioned the accused, they were assaulted. A criminal case was pending on the file of the Judicial Magistrate, Harur. On the other occasion, in the year 1988, the tractor driver of Sengoda Gounder and P.W.2 were also assaulted and a criminal case was also initiated in this regard and the same is pending. Accused 1 and 2 tried to purchase the lands of one Thottammal and Lingammal, but their intention did not fructify. The accused thought that it was only at the instigation

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of the prosecution parties, they could not purchase those lands and all these let to inimical terms between the parties.

(b) On 20.01.1989 at about 08.00 pm when P.Ws.1 and 2 were watching television and P.W.3 was in the main hall of the house and Sengoda Gounder was also in the kitchen, all the accused armed with deadly weapons came into the house and called the inmates of the house. When they came outside, the first accused attacked P.W.3 with knife on her head and hand. Accused 2 attacked with an iron rod on the legs of P.W.3. Accused 2, 6 and 7 attacked the deceased with crow bar. Accused-1 cut the deceased on the head with knife. Accused 1 also attacked P.W.1 with an aruval on his head and on the left hand. Accused 2 and 6 beat with an iron rod on P.W.1's right hand. Accused 2 and 6 with an iron rod attacked on P.W.1's right hand. They chased P.W.2, but P.W.2 went out by climbing over the rice bags and by removing the tiles in the roof of the house. P.W.1, the deceased, and P.W.3 were tied by the accused with ropes. Muthu Gounder, the father of the deceased and Periakka, the mother of the deceased were also attacked by the accused. The accused took the almirah key from P.W.3 and opened it and took away the jewels and money from there. They also damaged the television, telephone and other valuable articles. Sengoda Gounder and the other witnesses could not move as they were tied. P.W.2, who ran away from the house met P.W.4 and informed about the situation and in his cycle they went to Kambainallur police station. There, a police constable, who was not conversant with Tamil was alone available. Therefore, he could not give anye information to the police constable. P.W.2 returned home by taking a jeep, which was in front of the police station. P.W.2, on finding his parents and brother tied, untied them and took all the injured witnesses to the Government Hospital, Dharmapuri and they reached there at 09.40 pm.

(c) P.W.12, the doctor attached to the Government Hospital, Dharmapuri, medically examined Sengoda Gounder at about 09.00 pm and found the following injuries on him :

1. A lacerated injury left leg near knee of 2 cm x 1 cm x muscle deep.
2. A lacerated injury left leg of 2 cm x 1 cm x muscle deep 10 cm from injury 1.
3. A lacerated injury left leg near ankle of 2 cm x 1 cm x muscle deep.
4. A lacerated injury right leg of 2 cm x 2 cm muscle deep.
5. A lacerated injury left side forehead of 3 cm x 2 cm x bone depth.
6. A lacerated injury near left eyebrow of 5 cm x 3 cm x bone depth.
7. A contusion left forearm of 15 cm x 4 cm x skin colour.
8. A contusion over the upper lip of 5 cm x 3 cm x skin

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colour with missing teeth.
9.C/o pain abdomen.
10.A lacerated injury in the parietal region of 2 cm x 3 cm x bone depth.

He issued Ex.P.57 a copy of the accident register. The doctor also examined P.W.1 at 09.50 am and has issued a wound certificate, Ex.P.24, wherein he has noted the following injuries:

1. A lacerated injury left elbow of 3 cm x 2 cm x skin depth.
2.A contusion right elbow and forearm of 10 cm x 5 cm x skin colour.
3.A lacerated injury right occipito-parietal region 5 cm x 2 cm x skin depth.
4.A contusion left lateral Malleolus of 5 cm x 3 cm x skin colour.
5.A contusion centre of back 10 cm x 3 cm x skin colour.

At 10.00 pm, P.W.12 examined Periakkal, the mother of the deceased for her injuries and found the following injuries on her person:

1.A lacerated injury right thumb of 5 cm x 3 cm x skin depth.
2.A lacerated injury right forearm of 5 cm x 2 cm x skin depth.
3.A contusion right leg of 10 cm x 3 cm x skin colour.
4.A contusion left elbow of 5 cm x 3 cm x skin colour.

He issued wound certificate, Ex.P.25. Thereafter, at 10.20 pm, the doctor examined Muthu Gounder and found the following injuries on him, which he had marked in Ex.P.26:

1. A lacerated injury right forehead of 10 cm x 1 cm x bone depth.
2.A lacerated injury left side forehead 10 cm x 2 cm x bone depth.
3.A lacerated injury left side parietal region of 10 cm x 3 cm x bone depth.
4.A lacerated injury left thigh of 3 cm x 2 cm x skin depth.
5.A contusion right forearm of 5 cm x 3 cm x skin colour.

P.W.3 was examined by the doctor 10.45 pm and a wound certificate Ex.P.27 was issued narrating the injuries found on her:

1.A lacerated injury centre of parietal region of 10 cm x 2 cm x bone depth.
2.A contusion right knee of 5 cm x 3 cm x skin depth.

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(d) On intimation from the hospital, a constable Ramasamy attached to Kambainallur Police Station went to the Government Hospital and recorded the statement of P.W.1. Ex.P.1 is the said statement. In the meantime, Sengoda Gounder, who was undergoing treatment succumbed to the injuries. On the strength of Ex.P.1, a case in crime No.4/89 came to be registered for the offences punishable under sections 147, 448, 323, 324, 325, 307 and 302 of

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the Indian Penal Code. Express reports were prepared. The printed first information report, Ex.P.39 was sent to Court.

(e) P.W.16, the Inspector of Police took up investigation in the case and proceeded to the Government Hospital, Dharmapuri. There he conducted inquest over the dead body of the deceased in the presence of the witnesses and panchayatdars between 05.30 am and 08.30 am and prepared Ex.P.40 inquest report. After the completion of inquest he issued a requisition, Ex.P.29 to the doctor for conducting postmortem.

(f) Immediately after issuing requisition P.W.16 went to the place of occurrence. He summoned the finger print experts to the place of occurrence. He reached the place of occurrence at 09.00 am and in the presence of witnesses he prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.41. He seized M.Os.19 to 21, which were produced by P.W.10, the finger print expert, under a mahazar, Ex.P.3. The broken articles in the house of the deceased, M.Os.1 to 6 were recovered from the scene of occurrence under a mahazar, Ex.P.4. The other material objects No.22 to 27 were also seized under a mahazar, Ex.P.5.

(g) P.W.13, the doctor attached to the Government Hospital, Dharmapuri, pursuant to the requisition, Ex.P.29, conducted autopsy on the body of the deceased at 10.30 am and found the following injuries on the body :

1.A Sutured wound on the left side of forehead crossing midline 3 cms long.
2.A sutured wound above left eye brow 5 cms long.
3.Two abrasions right side face 2 cms x 1 cm each.
4.A sutured wound in left parietal region 3 cms.
5.A contusion in upper lips 3 x 2 cms.
6.Two linear abrasions in right shoulder 3 x ½ cm each.
7.A diffused contusion in left forearm 15 cms x 12 cms.
8.A sutured wound below left knee 2 cms long.
9.Sutured wound left leg mid 1/3, 2 cms long.
10.A sutured wound in left leg near ankle 2 cms.
11.Sutured wound right leg mid 1/3 2 cms.
12.Central, lateral, incisor – upper jaw missing with laceration of gum margins/cavities filled with blood clot.

He issued Ex.P.30 postmortem certificate with his opinion that the deceased would appear to have died of shock and haemorrhage due to head injury.

(h) On 22.01.1989 P.W.16 went the Government Hospital, Dharmapuri and examined the injured witnesses. He came to know that on 04.02.1989 accused 1, 2, 3 and 6 surrendered before the Judicial Magistrate, Salem. Accused 4 and 5 were arrested on 04.02.1989 at

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12.30 pm. At that time they voluntarily gave confessional statements, the admissible portions of such statements stood marked as Exs.P.6 and 42. Pursuant to the admissible portions of the confession statements, accused 4 and 5 produced iron pipes, M.Os.29 and 30, which were recovered under mahazar, Ex.P.5. On 08.02.1989 accused 1 to 3 and 6 were taken to police custody. All the accused joined together and gave a confession. The admissible portion of the said confession is marked as Ex.P.43. Pursuant to Ex.P.43, the weapons, M.Os.7 to 11, 14 and 31 were seized under a mahazar, Ex.P44. Accused 14 was arrested on 13.02.1989 at 06.30 am and he gave a confession statement, the admissible portion stands marked as Ex.P.8. Pursuant to Ex.P.8, iron pipe, M.O.28 was produced, which was seized under a Ex.P.9 mahazar. On 15.02.1989 at 08.30 pm accused 7, 8, and 9 were arrested. Accused 7 gave a confession statement, the admissible portions are marked as Exs.P.45, P.47 and P.48 respectively. Accused 10 was also arrested and he also gave a confession statement, the admissible portion is marked as Ex.P.49. All these accused produced M.O.15 aruval, and the money taken from the house of the deceased, M.Os.33, 34, 35, iron rod, M.O.12 were seized under mahazars, Ex.P.50 and P.51. Accused 9 was also arrested at 11.30 pm and he produced M.Os.36, 37 money and M.O.13 crow bar, which were seized under a mahzar, Ex.P.52. Accused 10 produced some money, M.O.38 and iron pipe, M.O.39 under a mahazar, Ex.P.53. Accused 11 was arrested on 10.03.1989 and pursuant to the admissible portion of the voluntary statement given by him, Ex.P.54, he produced M.O.41 iron rod, M.O.42 and 43 money and stamp papers, which were seized under a mahazar, Ex.P.56. The material objects recovered from the place of occurrence, from the dead body of the deceased and pursuant to the confession statement given by the appellants were all subjected to chemical analysis. The reports of the chemical analyst are Exs.P.35 and P.36 and the reports of the Serologist are Exs.P.37 and P.38. On completion of the investigation final report was filed by the Investigating Officer on 25.10.1989. The case was committed to the Court of Session and necessary charges were framed as mentioned above.

3. In order to substantiate the charges levelled against the appellants/accused, the prosecution marched 16 witnesses and relied on 59 exhibits and 44 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false. No witness was examined on their side. The report of the finger print expert is marked as Ex.D1. After hearing both sides, the trial Court was of the opinion that the prosecution has not proved its case beyond all reasonable doubts and found the accused not guilty and acquitted all of them. Hence, the appeal by the State.

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4. Learned counsel for the State, inter alia, would submit that in the instant case the injured witnesses are examined as P.Ws.1 and 3. They have thoroughly narrated the occurrence. Immediately after the occurrence the injured witnesses and the deceased were taken to the hospital, where P.W.1 gave a statement on the basis of which a case came to be registered. All the accused at the time of arrest have given confession statements, pursuant to which the weapons and the money and other valuable materials connecting the accused with the crime have also been recovered by the investigation.

5. Added further the learned counsel for the State that all these injured witnesses were medically examined and their wound certificates have been produced before the Court, where they have clearly stated as to who attacked them.

6. The learned counsel would also submit that the trial Court has acquitted all the accused on filmy grounds, which should not have been given any weight at all. Under the circumstances, the judgment of the trial Court has to be set aside and the appellants have to be dealt with in accordance with law.

7. The Court heard the learned counsel for the respondents on the above contentions.

8. It is not in controversy that Sengoda Gounder, P.Ws.1 and 3 were attacked at the time of occurrence. Apart from that Periakka and Muthu Gounder were also attacked and they were taken to the hospital and wound certificates have also been produced before the Court. It is also evident from the evidence of P.W.13, the doctor, who conducted postmortem on the body of Sengoda Gounder and from Ex.P.30 postmortem certificate issued by him that Sengoda Goudner died on account of the injuries sustained by him at the time of the occurrence and the injured sustained injuries at the time of the occurrence. Hence, it can be safely held so.

9. It is the case of the prosecution that on the date of the occurrence at 08.00 pm P.Ws.1 to 3 and the deceased were in their house. All the accused armed with deadly weapons came inside their house and attacked Sengoda Gounder and other witnesses, caused damages to the articles and fled away from the place of occurrence. It has to be pointed out at this stage that according to P.W.2, while the occurrence was going on, he ran away from the house by removing a tile of the roof and he met P.W.4 on his way and he and P.W.4 went to the police station, where he could not give a report about the occurrence to the constable, since the constable was not conversant with Tamil. But this version was falsified by the version of P.W.4. According to P.W.4, he accompanied P.W.2 in a

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cycle and they went to Kambainellur Police Station, where a police constable was available to whom P.W.2 gave the details of the crime and that was recorded. This evidence of P.W.4 contradicts the evidence of P.W.2.

10. According to the prosecution, a case came to be registered on the strength of Ex.P.1, report given by P.W.1 at the Government Hospital at 11.30 pm to a police constable Ramasamy. From the evidence of P.W.4, it would be quite clear that a statement was recorded by the constable in the police station even before Ex.P.1 was recorded in the hospital. But that statement is not placed before the Court. In such circumstances, a duty is cast upon the prosecution to examine the Constable Ramasamy, who according to the prosecution, recorded the statement, Ex.P.1 at the hospital from P.W.1, but he was not examined and thus it casts a doubt whether Ex.P.1 produced before the Court was the earliest document, which came into existence.

11. The second circumstance, as rightly pointed out by the Sessions Judge, was the statement given by P.W.1 to doctor, P.W.12, which is the earliest version about the occurrence. P.W.12 has recorded in the wound certificate, Ex.P.24 issued in respect of the injuries found on P.W.1 that P.W.1 has stated that he was attacked by unknown persons. It is seen that P.W.1 was a college student and admittedly he knew the accused all along. Had it been true that P.W.1 and other witnesses were attacked by known persons and particularly the accused, with whom they had long standing enmity, there was no impediment for P.W.1 to give the names of the accused, but he has not done so. This also casts a doubt on the case of the prosecution.

12. The next circumstance is that the finger print expert was called by the Investigating Officer to the scene of occurrence, who also came to there and has also given a report. The finger print expert, who gave the report was examined as P.W.10. His report, though not marked by the prosecution, was marked by the defence as Ex.D1. A reading of Ex.D1 report would clearly reveal that he was called to examine the finger prints available at the scene of occurrence, since the accused were not known. This would clearly indicate that at the time of investigation on the next day of the occurrence, the Investigating Officer did not know as to who were the assailants. This throws much doubt on Ex.P.1 complaint alleged to have been given at 11.00 pm by P.W.1 to the Constable.

13. It is also pertinent to note that Muthu Gounder, who was also injured at the time of occurrence, according to the prosecution, was not examined as he died two months prior to the date on which P.W.1 gave evidence in court. Ex.P.57, the copy of the accident register in respect of the injuries found on Muthu

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Gounder was marked in Court and the original when disputed was called for after a period of ten years from the hospital, but it is pertinent to point out that there is a discrepancy with regard to an inter lineation, which was available in the original, but was not in the copy and this would cast a doubt whether the said Muthu Gounder was attacked at all at the time of the occurrence.

14. It is also to be noted that P.W.3 has even informed to the doctor that she was attacked by an iron rod and hence she gave evidence that she was attacked by iron rod. But the medical evidence did not support her evidence.

15. In the instant case since Ex.P.1 is doubtful and injured witness P.W.1 has stated to the doctor that he was attacked by unknown persons and the summoning of the finger print experts to the scene of occurrence by the Investigating Officer to find out the culprits would all indicate that all is not well with the case of the prosecution.

16. Under the circumstances, the benefit of doubt to which accused are entitled to, has to be given to them and it was accordingly given to them by the lower Court. The lower Court has rightly found that the prosecution has not proved its case beyond all reasonable doubts and therefore, the judgment of the trial Court has to be sustained and it is accordingly sustained. The appeal fails and it is accordingly dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The I Additional Sessions Judge-cum-
Chief Judicial Magistrate, Krishnagiri.

2.-do- through the Principal Sessions Judge,
Krishnagiri.

3.The Judicial Magistrate, Harur,
Dharmapuri District.

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4.The Inspector of Police,
Kambainallur Police Station,
Dharmapuri District.

5.The Public Prosecutor,
High Court, Madras.

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